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HOUSE BILL 475

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO TELECOMMUNICATIONS; PROVIDING PROTECTION FOR  
CONSUMERS OF TELECOMMUNICATIONS SERVICES; PRESCRIBING  
PENALTIES; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the  
"Telecommunications Consumer Protection Act".

Section 2. FINDINGS AND PURPOSE.--

A. The legislature finds that:

(1) in today's complex and rapidly changing  
technological environment, individuals, businesses and  
governments rely on a diverse array of interconnected systems,  
employing a variety of modalities, to communicate  
electronically;

(2) regardless of different regulatory

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1 jurisdictions, consumers need assurance of reliable service,  
2 including protection from unreasonable interruption or  
3 discontinuance of service, and a forum for complaints to be  
4 heard in an expeditious and affordable manner; and

5 (3) as provided in Article 11, Section 13 of  
6 the constitution of New Mexico, when necessary for the public  
7 good and general welfare, any corporation doing business in  
8 this state may be regulated, limited or restrained by laws not  
9 in conflict with the constitution of the United States or the  
10 constitution of New Mexico.

11 B. It is the purpose of the Telecommunications  
12 Consumer Protection Act to further the public interest and  
13 protect the safety, health and welfare of the people of New  
14 Mexico by ensuring that consumers, including commercial and  
15 governmental entities, are protected from unreasonable  
16 interruptions or discontinuation of vital telecommunications  
17 and information services and provided with regulatory oversight  
18 to address legitimate complaints.

19 Section 3. DEFINITIONS.--As used in the  
20 Telecommunications Consumer Protection Act:

21 A. "commission" means the public regulation  
22 commission;

23 B. "consumer" means a person who purchases retail  
24 or wholesale telecommunications service from a provider;

25 C. "discontinuance of service" means an intentional

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1 cessation of service by a provider not voluntarily requested by  
2 a consumer;

3 D. "provider" means:

4 (1) a telephone company, transmission  
5 company, telecommunications common carrier, telecommunications  
6 company, cellular or other wireless telecommunications service  
7 company;

8 (2) a company that provides a cable  
9 television service, a broadband or high-speed internet service,  
10 an information or internet service or a voice over internet  
11 protocol service;

12 (3) a telecommunications reseller; or

13 (4) any other person that provides  
14 retail telecommunications service to a consumer; and

15 E. "telecommunications service" means the  
16 transmission of signs, signals, writings, images, sounds,  
17 messages, data or other information of any nature by wire,  
18 radio, lightwaves or other electromagnetic means or goods and  
19 services related to the transmission of information that are  
20 provided by the provider.

21 Section 4. COMMISSION POWERS AND DUTIES--RULEMAKING.--

22 A. The commission shall enforce the provisions of  
23 the Telecommunications Consumer Protection Act against anyone  
24 regulated in whole or in part by the commission or over whom  
25 the commission is given regulatory authority by state or

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1 federal law.

2 B. The commission may hold a provider liable for  
3 the actions of its employees, officers, affiliates and agents,  
4 and a provider's officers and employees liable for their own  
5 actions.

6 C. The commission shall promulgate rules:

7 (1) on what constitutes discontinuance of  
8 service and under what circumstances it may be permissible;

9 (2) prohibiting discontinuance of service  
10 where the public health, safety and welfare may be adversely  
11 affected;

12 (3) establishing procedures for the  
13 discontinuance of service, including provisions for proper  
14 notice to consumers and third parties, offers of payment plans  
15 and the timing of disconnection;

16 (4) governing restoration of service after  
17 disconnection of services;

18 (5) defining essential governmental services;  
19 and

20 (6) necessary to implement the provisions of  
21 the Telecommunications Consumer Protection Act.

22 D. The commission shall establish an expedited  
23 consideration process for investigation and resolution of  
24 complaints filed with the commission pursuant to the  
25 Telecommunications Consumer Protection Act, including the

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1 hearing of formal complaints.

2 Section 5. PROHIBITED ACTS--COMPLAINTS FILED WITH  
3 COMMISSION.--

4 A. A provider shall not:

5 (1) discontinue service to offices that  
6 provide essential governmental services;

7 (2) discontinue service to health care  
8 facilities;

9 (3) discontinue service without providing  
10 proper notice to consumers;

11 (4) unreasonably or improperly threaten to  
12 discontinue service to a consumer; or

13 (5) fail to restore service in response to a  
14 valid request to restore service.

15 B. A consumer or provider, who may also be a  
16 consumer, or commission staff may file a complaint with the  
17 commission alleging violation of the Telecommunications  
18 Consumer Protection Act or the rules promulgated by the  
19 commission to implement that act. A consumer or provider, who  
20 may also be a consumer, or commission staff may file a  
21 complaint alleging threats of improper discontinuance of  
22 service. The commission may combine complaints.

23 Section 6. ADMINISTRATIVE PENALTIES--APPEALS.--

24 A. If the commission finds after investigation,  
25 notice and hearing that a provider engaged in any conduct that

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1 the provider knew or should have known was a violation of the  
2 Telecommunications Consumer Protection Act or any applicable  
3 law or rule or order of the commission, it may assess an  
4 administrative penalty of not less than one thousand dollars  
5 (\$1,000) for each violation or each of multiple violations  
6 arising out of the same facts, up to a maximum of twenty-five  
7 thousand dollars (\$25,000) or an administrative penalty of not  
8 more than twenty-five thousand dollars (\$25,000) per day for  
9 each day of a continuing violation arising out of the same  
10 facts.

11 B. The amount of the fine should bear a reasonable  
12 relationship to the nature and severity of the violation. The  
13 commission shall consider mitigating and aggravating  
14 circumstances in determining the amount of the administrative  
15 fine imposed.

16 C. In addition to the fines authorized in  
17 Subsection A of this section, the commission may impose an  
18 administrative fine not to exceed one hundred thousand dollars  
19 (\$100,000) for each violation that results in substantial harm  
20 to the consumers of the provider or substantial harm to the  
21 public interest.

22 D. The remedies and penalties provided for in the  
23 Telecommunications Consumer Protection Act are in addition to  
24 any other penalties that may be imposed pursuant to any other  
25 state law or any other remedies available to consumers.

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E. Any provider or other person aggrieved by an order assessing an administrative fine may appeal the order to the supreme court. A notice of appeal shall be filed within thirty days after the entry of the commission's order. Notice of appeal shall name the commission as appellee and shall identify the order from which the appeal is taken.

Section 7. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.

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